82-927

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

NO.

FREDERICK C. LANGONE, et al.,
Appellants,

v.

MICHAEL J. CONNOLLY, et al.,
Appellees.

ON APPEAL FROM THE SUPREME JUDICIAL
COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether the constitutional right of political association requires a state to enforce a rule of a state political party which differs from the statutory requirements for access to primary ballots?

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JURISDICTIONAL STATEMENT

The Attorney General of the Commonwealth of Massachusetts, acting on his own behalf[1/] pursuant to the

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1/ Frederick C. Langone, Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, The Langone For Lieutenant Governor Committee, and Joel M. Pressman were additional plaintiffs in the state court proceedings. A sepa-

(footnote continued)

provisions of Mass. Gen. Laws c. 12, § 3, files this Jurisdictional Statement seeking plenary review by this Court of final judgment entered by the Supreme Judicial Court for Suffolk County.

OPINION BELOW

The Opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts has not yet been issued and is therefore not reported.[2/] The Supreme

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(footnote continued)

rate Jurisdictional Statement is being filed on behalf of those plaintiffs with the exception of Joel Pressman. The Defendants were the Secretary of the Commonwealth, Michael J. Connolly, and the Democratic State Committee, and four candidates for lieutenant governor: Evelyn F. Murphy, Samuel Rotondi, John F. Kerry and Lois E. Pines.

2/ The Supreme Judicial Court has issued a related opinion which presented a question similar to that presented here. See Opinion of the Justices, 385 Mass. 1201 (1982). The advisory opinion was advisory in nature, it is not binding authority, Lincoln v. Secretary

(footnote continued)

Judicial Court's response to the questions reserved and reported by a Single Justice of the court is reproduced in the Appendix A. (1A-4A) The Reservation and Report is also reproduced as Appendix B. (5A-7A) Finally, the Judgment entered by the Single Justice is set forth in Appendix C. (8A-10A)

JURISDICTION

Because the Opinion or Opinions of the state's highest court have not yet been issued, it is not possible for the Attorney General to specify the jurisdictional basis for this appeal. The Supreme Judicial Court may have upheld

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(footnote continued)

of the Commonwealth, 326 N.E.2d 313, 314, 93 N.E.2d 744, 745 (1950), and the pending legislation which was the subject of the advisory opinion was never enacted into law.

the constitutionality of the Massachusetts statutory scheme for obtaining access to state primary ballots in light of a challenge that the statutes are repugnant to the Constitution of the United States. The jurisdiction of this Court would therefore be conferred by 28 U.S.C. § 1257(2). First National Bank v. Bellotti, 435 U.S. 765 (1978); Commonwealth Bank v. Griffith, 39 U.S. 56 (1840).

The Supreme Judicial Court may also have held that the Massachusetts statutory scheme fails to protect the political associational rights of the members of the state Democratic party and is therefore repugnant to the Constitution of the United States. In that event, the Appellant respectfully requests that this pleading be treated as a Petition for Writ of Certiorari.

If the statutory scheme has been held to be unconstitutional, the jurisdiction of this Court would be conferred by 28 U.S.C. § 1257(3). New York State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); Minnesota v. Clover Leaf Creamery Company, 445 U.S. 949 (1980).

Because of the Attorney General's uncertainty concerning the basis of the decision of the Court below, he expressly requests the opportunity to supplement this Statement within thirty days from the date the Opinion or Opinions of the Supreme Judicial Court are issued.

STATUTES INVOLVED

This litigation involves the entire state statutory scheme by which candidates are nominated for state office at political primaries. Of particular and direct relevance is the

statute that governs the means by which candidates may have their names placed upon the state primary ballots. Mass. Gen. Laws c. 53, § 44. The full text of this statute is as follows:

> The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of the governor, lieutenant governor, attorney general and United States senator, nomination papers shall be signed in the aggregate by at least ten thousand voters; in the case of the state secretary, state treasurer and state auditor, they shall be signed by at least five thousand voters. Such papers for all other offices to be filled at a state election shall be signed by a number of voters as follows: for representative in congress, two thousand voters; for councillor, district attorney, clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer, one thousand voters, except that in Barnstable, Berkshire, Franklin, and Hampshire counties such papers for nomination to the office of clerk of courts, register of probate, register of deeds, county commissioner, sheriff and county treasurer shall be signed by five hundred voters; for state senator, three hundred voters; for representative in the

general court and commissioners to apportion Suffolk county, one hundred and fifty voters. If ten per cent of the number of voters in the respective district who are enrolled in the party whose nomination the candidate seeks is a lesser number than the number otherwise required by the preceding sentence, then the number of voters required shall be such ten per cent or shall be fifty per cent of the number of voters otherwise required by the preceding sentence, whichever is greater. The total number of such enrolled voters shall be determined from the records in the office of the state secretary. In Dukes and Nantucket counties such papers for nomination to all offices within the county to be filled at any state election shall be signed by twenty-five voters.

STATEMENT OF THE CASE

This action was initiated by a candidate for the nomination of the Massachusetts Democratic party for the office of Lieutenant-Governor. The action was brought to challenge the decision of the Secretary of the Commonwealth to enforce a rule of the Massachusetts Democratic party. The

rule excluded from the state Democratic primary ballot any candidate who had not obtained at least 15% of the votes cast at the Democratic party's nominating convention.[3/] The plaintiff candidate failed to receive the necessary 15% of the votes of the nominating convention. He did, however satisfy all of the statutory requirements for having his

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3/ Article Six, Section III of the Charter of the State Democratic Party, it its entirety, states:

> There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the provision that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election.

name placed on the state Democratic primary ballot.[4/]

The Attorney General intervened as a plaintiff with a separate complaint in the nature of mandamus, seeking to compel the Secretary to place on the state Democratic primary ballot all candidates who satisfied the applicable statutory requirements, notwithstanding the rule of the state Democratic party requiring candidates to obtain 15% of the convention vote.

4/ The statutorily imposed requirements are filing at least 10,000 certified signatures of Democratic or independent voters, Mass. Gen. Laws c. 53, §§ 44 and 46, filing an acceptance of the nomination, Mass. Gen. Laws c. 53, §§ 9 and 45, filing a certificate of party registration, Mass. Gen. Laws c. 53, § 48, and filing a receipt indicating that the candidate has filed a financial disclosure statement with the State Ethics Commission. Mass. Gen. Laws c. 53, § 9.

Upon petition of the parties, the case was transferred from the Superior Court to the Supreme Judicial Court for Suffolk County pursuant to Mass. Gen. Laws c. 211, § 4A. (App. 11A-16A) The parties then entered into a comprehensive Statement of Agreed Facts, and upon motion, a Single Justice reserved and reported the matter to the full court for disposition. (App. 5A-7A)

Following the simultaneous submission of briefs and after oral argument, the Supreme Judicial Court issued an order upholding the Secretary's decision and actions the Court indicated that its Opinion or Opinions would follow. (App. 1A-3A) The next day the Single Justice issued Judgment in accordance with the Order of the full court. (App. 8A-10A) Langone and the Attorney General each filed

separate notices of appeal. (App. 19A-21A) Because the Opinion or Opinions of the Supreme Judicial Court had not been issued on September 27, 1982, Justice Brennan granted the Appellant a sixty day extension of time to docket his appeal or to petition for a writ or certiorari. No further extension of time is possible. 28 U.S.C. § 2101(c).

THE QUESTION IS SUBSTANTIAL

I. This Case Presents A Novel And Important Question Arising Under The First and Fourteenth Amendments, Concerning The Respective Roles of State Statutes And Party/Rules In Establishing Qualifications For Access To Primary Election Ballots.

This case concerns the state's authority to regulate primary elections. The question raised was left unanswered by this Court in Cousins v. Wigoda, 419 U.S. 477 (1975), and Democratic Party of the United States of

America v. Wisconsin, 450 U.S. 107 (1981). In these cases, the Courts determined that the political associational rights of national political parties enabled the parties to decide who may take part in the National Nominating Conventions. The Court did not, however, address the question of conflict between state law and state party rules concerning state conventions and primaries, nor conclude that the associational rights of the political party predominate.[5/]

5/ "[T]his case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of national conventions or state regulation of state primaries or conventions for state offices raises different consideration requiring a wholly different balance." Cousin v. Wigoda, 419 U.S. at 497, n. , (Powell, J. concurring in part and dissenting in part).

The Supreme Judicial Court has added a new dimension to the constitutional right of political association. Unlike the party rules at issue in Wigoda and Wisconsin, this case does not involve a restriction on the participants in a national party convention. Rather, it concerns the question of who should control access to the state primary ballot: the party or the state legislature. The Supreme Judicial Court has seemingly recognized the absolute right of the party to dictate the qualifications for access to the primary ballot, and thereby grant to the party regulars complete dominium over the selection process.[6/]

6/ The Attorney General recognizes the legislature's right to authorize by statute the political parties right to make this determination. See Yuratich

(footnote continued)

This case deserves plenary consideration because this issue is of substantial importance to every state which has adopted the primary system as the means by which political parties choose their nominees.7/ The challenged decision can permit the virtual nullification of the primary process; if the parties have the absolute right to set minimum ballot access qualifications, then a state may not be able to retain control of the

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(footnote continued)

v. Plaquemines Parish Democratic Executive Committee, 32 So.2d 647 (La. 1947). In this case, the Massachusetts Legislature has retained for itself the determination of which candidates may be placed on primary ballots.

7/ Critical as the issue may be elsewhere in the United States, it is of paramount importance in Massachusetts where the Democratic nominees have been elected to every state-wide office since 1970.

political process to ensure an open and fair selection of party candidates. Since the primary election system was designed to free the nomination process from domination by party bosses and to eradicate the abuses inherent in conventions anc caucuses, elevating the rights of party regulars and enforcing a 15% convention rule strikes at the very heart of primary elections.

II. The Decision Below Conflicts With The Decisions Of Other Federal And State Courts In Its Holding That A Political Party May Cause To Be Excluded From The Primary Ballot A Candidate For Nomination Who Has Met All Statutorily Imposed Requirements For Ballot Access.

Based upon its apparent misreading of this Court's precedents, the Supreme Judicial Court has reversed a traditional approach used by Courts to resolve conflicts between state law and party rules. In doing so, the Supreme Judicial Court has created a conflict

between itself and other state and federal courts. When a political party's rule conflicts with state law, courts have historically struck down the rule as unenforceable. Thus, in Dunshie v. Fields, 115 So. 45 (La. 1927), the Supreme Court of Louisiana held that where a state statute set a deadline for candidates to file their notice of intention, the party lacked the discretion or the authority to extend the deadline.

Similarly, the Supreme Court of Texas in Love v. Wilcox, 28 S.W.2d 515 (Tex. 1930), held that a political party could not impose a more restrictive loyalty requirement on candidates seeking access to the party's primary ballot than was imposed by state statute. The Texas Supreme Court later followed this decision stating, "The

committee is utterly wanting in authority to subtract from or add to the words of the statutory pledge . . . ." Friberg v. Scurry, 33 S.W.2d 762, 766 (Tex. 1930); see also Clancy v. Clough, 30 S.W.2d 569 (Tex. 1928).

Where state statutes set out the requirements for access to primary ballots, the courts of various jurisdictions have universally refused to give affect to party rules which unilaterally establish different or more stringent requirements. Stock v. Harris, 193 Ark. 114, 97 S.W.2d 920 (Ark. 1936)(payment of ballot fees required by party rule but not by state statute); Stevenson v. Sherman, 231 S.W.2d 506 (Tex. 1950)(payment of fees by candidates to the political party required by the party in excess of those imposed by statute); Hammer v. Curran,

118 N.Y.S.2d 268, 273 (N.Y. 1952)(more stringent residence requirement imposed by party rule than by state law); Lasseigne v. Martin, 202 So.2d 250, 257 (La. 1967)(imposition of financial obligation by party rule in excess of that required by statute). See also, Winn v. Wooten, 196 Ark. 737, 119 S.W.2d 540, 541 (Ark. 1938)(". . . while the Democratic organization has a right to construe its rules and enforce them without interference from the court, yet, where a rule of any party is in conflict with any statute, such rule is void.")[8/]

8/ Although these cases largely predate this Court's decisions in Cousins and Wisconsin, the fact that the cases decided by this Court dealt with seating delegates to a national convention leaves the reasoning of the state courts intact. See supra at pp. for a fuller discussion of the Cousins and Wisconsin decisions.

The Supreme Court of Louisiana has upheld and enforced a political party's nomination rule which was in excess of the requirements expressly set by statute. Yuratich v. Plaquemines Parish Democratic Executive Committee, 32 So.2d 647 (La. 1947). In that case, however, the Court based its decision upon an express statutory provision that allowed the party "to prescribe 'further qualifications' than those required 'by the Constitution and election laws.'" Id. at 650.

Similarly, in 1970, the United States District Court for the District of Connecticut upheld a requirement imposed by state statute that required prospective candidates to receive at least 20% of the delegate votes in a district nominating convention. Tansley v. Grasso, 315 F.Supp. 513 (D. Conn.

1970). This decision rested upon the constitutionality of the statutory condition for ballot access and did not concern the question of whether the party itself could have imposed such a requirement absent express statutory authorization. Thus, even those cases which recognize a continuing role for political parties in establishing qualifications for nomination start from the premise that regulating the manner and method of nomination is controlled by state statutory provisions. The decision of the Supreme Judicial Court, which apparently subjugates the mandatory terms of state law to the will of party regulars, is therefore in conflict even with this narrow category of cases.

III. The Decision Below Misapplies The Prior Decisions Of This Court By Creating A Hierarchy Of Associational Rights Providing Superior Rights To Party Regulars Than To Other Party Members.

In attacking an opinion which has not been issued, the Attorney General makes no claim of prescience. The Justices of the Supreme Judicial Court issued an advisory opinion to the Governor of Massachusetts earlier this year on a related subject, Opinion of the Justices, 385 Mass. 1201 (1982), and for purposes of this submission the Attorney General assumes that the logic of the advisory opinion will be reflected in the decision in this case. In that Opinion, the Justices considered a pending amendment to Mass. Gen. Laws c. 53, § 44, which would have expressly provided that candidates filing the required number of signatures of qualified voters were to be

placed on the primary ballot notwithstanding any contrary rule adopted by a political party.[9/] The Justices opined that the proposed law would violate the constitutional right of association held by the political party and its members. The Justices reasoned that because independent voters, could sign nomination petitions of candidates seeking access to the party's primary ballot, and because voters could both enroll and vote in the Democratic party on primary day, that by precluding the state's enforcement of the party's 15% rule, the proposed statute would violate the political associational rights of "party regulars" to have an effective role in choosing the party's nominee. Opinion of the Justices, 385 Mass. 1205. The Attorney General assumes

9/ This proposal was not enacted into law.

that the decision of the Supreme Judicial Court is based upon the reasoning expressed in this earlier Opinion of the Justices. Yet, there are significant errors of law that undermine the reasoning employed by the Justices.

First, the Court erroneously assumed that "party regulars" have a greater right to determine who the party's nominees will be than party irregulars, or party insurgents or new party members. The basis of the Opinion of the Justices, was that the "party regulars" should be able to require the state to enforce a party rule that provides them with greater control over the nominating process. In the absence of any statutory provision, this reasoning necessarily elevates the political associational rights of party

regulars above the rights of all other party members. There is simply no support for this proposition in the Constitution of the United States or in any decision rendered by this Court. By enacting statutes providing for primary elections and by providing that independent voters may join the party and vote on primary day, the Massachusetts legislature was clearly attempting to open the nominating process to all members of the Democratic party. This legislation was designed to enhance the associational freedoms of party members by removing the control of party regulars and party bosses from the nominating process. The decision of the Supreme Judicial Court directly undermines the validity of that statutory determination.

Second, the Court incorrectly stated that non-party members could vote in the state Democratic primary.[10/] Only individuals who openly and publicly declare their association with the Democratic party and who have that association publicly recorded are entitled to vote in the state Democratic primary. These express statutory requirements[11/] conclusively demonstrate

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10/ "Voting in party primaries is limited to enrolled party members and unenrolled voters who enroll at the polls just before receiving ballots. Mass. Gen. Laws c. 53, § 37." Opinion of the Justices, 385 Mass. at 1205. (Emphasis in original.)

11/ Individuals may enroll in the Democratic party either by indicating that intent when they register to vote, Mass. Gen. Laws c. 51, § 44, or by requesting the board of registrars where they vote to place them on the rolls of the party, Mass. Gen. Laws c. 53, § 38, or by enrolling in the party at the polling place on primary day. Mass. Gen. Laws c. 53, § 37.

that Massachusetts employs a direct "closed" primary as opposed to the "open" primary used in some states. See LaFollette v. Democratic Party, 287 N.W.2d 519, 523 (1980), rev. on other grounds, sub. nom. Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981). Therefore, only members of the Democratic party may vote in the party's primary and only party members have any influence on the selection of the party's nominees. The Massachusetts statutory scheme simply does not impose a durational membership requirement prior to participation in the primary process.[12/]

12/ It should be emphasized that a member of another political party can not enroll and vote in the Democratic primary on the day of the primary. The Massachusetts statutory scheme provides that a change in party enrollment does not become effective for twenty-eight days. Mass. Gen. Laws c. 53, § 38.

IV. The Decision Below Removes The Ability Of The States To Control An Integral Part Of The Election Process.

By elevating the right of the state political party to compel the state to enforce party rules governing access to primary ballots, the Supreme Judicial Court decision can permit the circumvention of the entire primary process.

The right of the state to require that political parties nominate their candidates by primary elections is well-established. "It is too plain for argument . . . that the state may limit each party to one candidate for each office on the ballot and may insist that intraparty competition be settled before the general election by primary election or by party convention." (citation omitted) American Party of Texas v.

White, 415 U.S. 767, 781 (1974). The right to have the party's nominee selected at a primary election, conducted at state expense, is a right created, defined and limited by statute. See Smith v. Allwright, 321 U.S. 649 (1944).

In Massachusetts, prior legislation provided an express role for nominating conventions. See 1932 Mass. Acts c. 310; 1953 Mass. Acts c. 406; 1966 Mass. Acts c. 56, § 2. In 1973 these statutory provisions were repealed in favor of the primary election as the sole mechanism for selecting the parties' nominees for state-wide office. 1973 Mass. Acts c. 429 The nominating convention held in 1982 by the state Democratic party was not statutorily required or regulated. It was purely a creation of

the members of the Democratic party.[13/]

The anticipated decision of the Supreme Judicial Court will necessarily mean that rules adopted by political organizations must be given effect by the state, even in the absence of any statutory authorization. The Court has apparently rested its decision on the associational rights of the party regulars. If such a constitutional right exists, that is, the right to establish qualifications for access to the state primary ballots, then the

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13/ The Attorney General does not challenge the right of the members of the party to hold such a convention. Nor does he suggest that the party could not adopt and internally enforce a 15% rule. The Attorney General merely asserts that the party can not require the state to enforce a party rule, absent express legislative authorization. Compare, Tansley v. Grasso, 315 F.Supp. 513 (D. Conn. 1970).

party regulars have the right to circumvent the statutes requiring parties to select their nominees by primary elections. If the party regulars have the constitutional right to require the state to enforce a 15% rule, they would likewise have the right to require the state to enforce a 35% rule or a 50% rule.[14/] By the uncritical acceptance of such rules, the Supreme Judicial Court has reduced the primary election to a hollow exercise of affirming the endorsement of the party regulars. It is precisely this type of dominance by party regulars that led to the progressive reforms adopted throughout the country at the turn of the

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14/ If a 35% rule had been in place in 1982, the incumbent Governor would have been denied ballot access and only one candidate for the Office of Governor could have been placed upon the Democratic primary ballot.

century, and specifically to the institution of primary elections. See Democratic Party of the United States v. Wisconsin, 450 U.S. at 136-7, n.13 (Powell, J. dissenting).

The question presented by this appeal is substantial as it directly implicates the continued vitality of the primary election process. The Supreme Judicial Court's decision will necessarily, perhaps automatically, divest the state of significant control of what has been described as an "integral part" of the election process. United States v. Classic, 313 U.S. 299, 314 (1941).

Conclusion

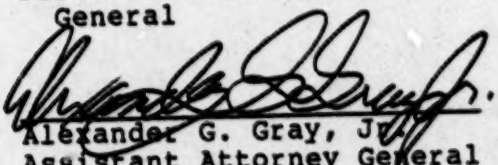
The question presented by this Statement is substantial. The Appellant urges this Court to grant his accompanying Motion and delay consideration of

the Statement until the Opinion or Opinions of the Supreme Judicial Court have been issued and supplementary pleadings have been filed. In the alternative, the Appellant urges this Court to note probable jurisdiction and set the case down for argument.

Respectfully submitted,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

Thomas R. Kiley
First Assistant Attorney General



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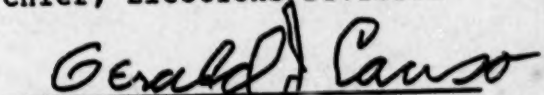

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DATED: December 1, 1982

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH

SJC-2889 At Boston

July 6, 1982

Frederick C. Langone, et al.

vs.

Secretary of the Commonwealth,

et al.

Order

On June 18, 1982, the Single Justice reserved and reported the following questions of law presented by this action: "1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at

least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth'? 2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth', but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?"

Upon consideration of the argument and briefs of the parties, we interpret

the State statutes in light of the State and Federal constitutions and rule that the Secretary must give effect to the relevant charter provision. Accordingly, we answer the questions reported, "no."

A rescript will issue forthwith with an opinion or opinions to follow.

By the Court,

/s/
Frederick J. Quinlan
Assistant Clerk

Entered: July 6, 1982

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH

In the Case At Boston,

No. SJC-2889 July 6, 1982

Frederick C. Langone, & others

vs.

Secretary of the Commonwealth

& others

pending in the Supreme Judicial Court for the County of Suffolk, No. 82-214-Civ.

ORDERED, that the following entry be made in the docket; viz., --

The reported questions are answered "No."

By the Court,

/s/
Frederick J. Quinlan
Assistant Clerk

July 6, 1982

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT
NO. 82-214-Civil

FREDERICK C. LANGONE, et al.,

Plaintiffs,

v.

MICHAEL J. CONNOLLY, et al.,

Defendants.

RESERVATION AND REPORT

I reserve and report to the Supreme Judicial Court for the Commonwealth the following questions of law presented by the above-entitled action:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen precent of the vote on any

ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth"?

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commowealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidate, or their supporters?

The foregoing questions of law are served and reported upon the Complaint,

the Complaint of the Attorney General, the Answer and Counterclaim of the Secretary, and the Statement of Agreed Facts executed by the parties, including attachments annexed. The following schedule will be observed by the parties:

(1) The briefs of each party will be filed on June 25, 1982.

(2) The matter is set down for hearing by the full court on June 29, 1982.

/s/
Associate Justice

DATED: June 18, 1982

A true copy,

Attest:

/s/
Clerk

June 22, 1982

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

FREDERICK C. LANGONE, et al., Plaintiffs, v. MICHAEL J. CONNOLLY, et al., Defendants.	)

JUDGMENT

This matter came on before the Court, O'Connor, J., presiding, on the rescript issued by the Supreme Judicial Court for the Commonwealth and entered in this Court,

It is Ordered and Adjudged as follows:

1. Candidates who have complied with applicable statutory requirements need not appear upon the Democratic state primary ballots if they failed to

obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth.'

2. The decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the 'Charter of the Democratic Party of the Commonwealth,' but otherwise complied with the statutory requirements to have their names placed upon the ballots did not violate the constitutional or statutory rights of the voters, the candidates, or their supporters.

Dated at Boston, Massachusetts this

7th day of July, 1982.

/s/
John E. Powers
Clerk of Court

A true copy,

Attest: John E. Powers,
Clerk

Dated: 7/7/82

APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT
NO. 82-214-Civil

FREDERICK C. LANGONE, et al.,

Plaintiffs,

FRANCIS X. BELLOTTI, as he is the Attorney General of the Commonwealth of Massachusetts,

Plaintiff-Intervenor

v.

MICHAEL J. CONNOLLY, as he is the Secretary of the Commonwealth of Massachusetts, et al.,

Defendants.

PETITION FOR TRANSFER

Pursuant to G.L. c. 211, § 4A, the undersigned parties to the above-captioned action pending in the Superior Court Department for Suffolk County (Civil Action No. 55255) petition for the transfer of the action to this

Court and state the following reasons:

1. The complaints in this action present the question of whether candidates for nomination to statewide office must be placed on the ballot of a state primary for the Democratic Party upon compliance with all statutory requirements for nomination despite the failure to receive fifteen percent of the vote of the party convention as arguably required by Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth."

2. The Justices of the Supreme Judicial Court referred to and discussed Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth" ("fifteen percent rule") in its Opinion of the Justices, 385 Mass. 1201 (1982).

All parties hereto pray that this

Court declare the rights, duties, status and other legal relations of all parties hereto under the "fifteen percent rule" and G.L. c. 52, and 53.

3. In reliance upon said Article Six, Section III and said Opinion of the Justices, the Secretary of State of the Commonwealth decided not to place upon the state primary ballot of the Democratic Party those candidates who did not receive fifteen percent of the convention vote. Plaintiffs in the above-captioned action were each notified by the Director of Elections, by separate letters dated May 26, 1982, that their names would not be placed on the Democratic state primary ballots. This action was commenced in the Superior Court Department against the Secrtary of State bringing into issue the validity and enforcement of the

"fifteen percent rule". All parties necessary for the entry of a declaratory judgment to resolve these issues have been joined in this action.

4. The Attorney General of Massachusetts has declined to represent the Secretary of State in this action, and has intervened as a party plaintiff to obtain, in an adversarial context with an appropriate record, a judicial determination of the validity and enforcement of the "fifteen percent rule". (A photostatic copy of the pleadings filed to date in this action are attached hereto.)

5. An actual controversy has arisen and presently exists among all parties hereto concerning the "fifteen percent rule" and the preparation and provision of the Democratic state primary ballots by the Secretary of State.

6. A prompt declaration of the rights, duties, status and other legal relations of all parties hereto is necessary to prevent voter confusion, to avoid unnecessary interference with the campaigns of the Democratic party candidates, and to allow adequate time to print (and to mail to absentee voters) ballots for the Democratic party state primary. Said ballots must be prepared on or before July 9, 1982.

Accordingly, the transfer of this action, in anticipation of the reservation and report to the Supreme Judicial Court, and an order requiring the completion of the pleadings and the submission of a Statement of Agreed Facts on or before June 16, 1982 is appropriate.

Thereupon, the reservation and report of this action to the Supreme

Judicial Court and a simultaneous filing of briefs on or before June 25, 1982, will facilitate and expedite a prompt judicial resolution.

The parties agree to expedite discovery should that necessity occur.

MICHAEL J. CONNOLLY, AS HE IS SECRETARY OF STATE OF THE COMMONWEALTH OF MASSACHUSETTS,

By his attorneys,

/s/

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By their attorneys,

/s/
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/s/
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JOEL M. PRESSMAN

By his attorney,

/s/
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Dated: June 10, 1982

A true copy.

Attest: /s/
John E. Powers
Clerk

June 22, 1982

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

FREDERICK C. LANGONE, et al.,	)
Plaintiffs, Appellants,	)
v.	)
MICHAEL J. CONNOLLY, et al.,	)
Defendants, Appellees.	)

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts, hereby appeals to the Supreme Court of the United States, or intends to seek review in that Court by way of a petition for a writ of certiorari from the final judgment of the Supreme Judicial Court of Suffolk County entered in this action on July 7, 1982.

Because the opinion or opinions in this matter from the Supreme Judicial Court for the Commonwealth are not yet available, the Attorney General cannot determine whether review will be sought by appeal or by petition for certiorari. It is unclear whether the Massachusetts statutory scheme has been upheld or declared unconstitutional as repugnant to the Constitution of the United States.

This appeal is therefore taken pursuant to 28 U.S.C. § 1257(2) or (3).

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

/s/
Thomas R. Kiley
First Assistant Attorney General

/s/
Alexander G. Gray, Jr.
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DATE: September 21, 1982

APPENDIX F

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

NO. 82-214-Civil

FREDERICK C. LANGONE, MADELINE G. SARNO, VICTOR GRILLO, LOUIS FERRETTI, GAIL A. FASANO, THE LANGONE FOR LIEUTENANT GOVERNOR COMMITTEE, FRANCIS X. BELLOTTI, as he is the Attorney General of the Commonwealth and JOEL PRESSMAN,	)
Plaintiffs/Appellants,	)
v.	)
MICHAEL J. CONNOLLY, as he is the Secretary of the Commonwealth of Massachusetts, DEMOCRATIC STATE COMMITTEE, SAMUEL ROTONDI, JOHN F. KERRY, LOIS PINES, and EVELYN MURPHY,	)
Defendants/Appellees.	)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Frederick C. Langone, Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano and The Langone for Lieutenant

Governor Committee, plaintiffs/appellants in the above-entitled action, hereby appeal to the Supreme Court of the United States from the final judgment declaring the rights of the parties entered in the Supreme Judicial Court for Suffolk County on July 7, 1982. This appeal is taken pursuant to 28 U.S.C. § 1257(2). Alternatively, depending upon the precise position taken by the Supreme Judicial Court for the Commonwealth in the opinion to be issued in support of the July 7, 1982, Judgment, review by the Supreme Court of the United States may be sought by writ of certiorari pursuant to 28 U.S.C. § 1257(3).

/s/
Thomas D. Burns
James F. Kavanaugh, Jr.
John J. McGivney
Attorney for Plaintiffs

Frederick C. Langone, Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, and The Langone for Lieutenant Governor Committee
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September 23, 1982